STRAITS SETTLEMENTS REPORTS.

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ONG JOO CHIN vs. REX.

[App. Crim. Juris. (Worley, J.) September 11, 1941]

Criminal Procedure Code S. 315—Duty of appellate Court in appeals from magistrates—Statements made to police under provisions of S. 124 of Criminal Procedure Code—examining witness on such statements—Procedure.

The appellant was convicted on a charge of causing grievous hurt by driving a motor car negligently, an offence punishable under S. 308 of the Penal Code. He appealed on the issue of his identity with the driver of the car.

Held, that by virtue of S. 315 of the Criminal Procedure Code, the onus is upon the appellant, in an appeal on a question of fact, to satisfy the appellate Court that the judgment was against the weight of the evidence.

At the trial, the magistrate rejected an application to cross-examine the witnesses on statements made to the police under the provisions of S. 124 of the Criminal Procedure Code but nevertheless marked the statements as exhibits and they appeared as part of the record.

Held, that where an application under S. 124 (2) was refused by the magistrate, the statement was not in evidence and should not be marked or form part of the record.

Cases referred to—

(1) *Letchumy v. P. P.* 1. M.C. 129.
(2) *Chia Han Kiat v. Rex* (1937) M. L.J. 261.
(3) *Santa Singh v. P. P.* (1938) M.L.J. 58.
(4) *Rasu v. Rex* (1939) M.L.J. 275.
(5) *Milan Khan v. Sagai Bepari* I.L.R. 23 Cal. 349.

MAGISTRATES' APPEAL.

John Laycock and T. W. Ong for Appellant.

The facts and arguments sufficiently appear from the Judgment.

Worley, J.—This is an appeal from a conviction by the Traffic District Judge and Magistrate, Singapore, who sentenced the Appellant to seven months' simple imprisonment for causing grievous hurt by driving motor-car S.2159 negligently, an offence punishable under Section 308 of the Penal Code. The Magistrate suspended the Appellant's driving licence for one year. There was no appeal from the finding of negligence the only issue being the identity of the Appellant with the driver of the car. This is solely a question of fact but there was some argument as to the principles upon which an Appellate Court in the Colony will interfere with a conviction by a Police Magistrate or District Judge, and I was referred by counsel for the Appellant to various rulings by Indian Courts which are set out in the paragraph numbered 30 on pages 895 and 896 of Sohoni's Code of Criminal Procedure, 13th Edition, 1931. I was also referred to the judgment of Burton J. in *Letchumy v. P. P.*[1] and to the cases of *Chia Han Kiat v. Rex*[2]; *Santa Singh v. P. P.*[3], and *Rasu v. Rex*[4].

In considering the Indian cases refered to it is necessary to note that the provisions of the Indian Criminal Procedure Code which define the power of the Court in appeals from Magistrates differ from the corresponding provisions of the Criminal Procedure Code of the Colony. Section 315 of the Colony Code provides "no judgment, sentence or order of a District Court shall be reversed or set aside until it is shown to the satisfaction of the High Court that such judgment, sentence or order was either wrong in law or against the weight of the evidence." On the other hand Section 423 of the Indian Criminal Procedure Code does not prescribe any such limitation as to the powers of the Court in dealing with appeals from a Magistrate or a Judge sitting alone, although sub-section (2) of that section provides that no verdict of a jury shall be altered or reversed unless the Court is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

In the case of *Milan Khan v. Sagai Bepari*[5] quoted by Burton J. in the judgment referred to above, the Calcutta High Court sitting in revision was considering the duty of a Magistrate's Court sitting in appellate jurisdiction from inferior courts. The judgment however defines in general terms the functions of appellate Criminal Courts in India as follows:—

"The learned Magistrate....has apparently considered that his duty as an Appellate Court was similar to that of an Appellate Court in civil cases and that he could not set aside the order of the original Court, unless the appellant satisfied him that that order was wrong....Having regard to the view that we take (of the duty of an Appellate Criminal Court) if the Judge of the Appellate Court had any doubt that the conviction was a right one and had any doubt as to whether the offence charged had been committed, whatever the original Court did, he should have discharged the accused."

In my opinion, this, and other similar pronouncements by Indian Courts, are incompatible with the provisions of Section 315 of the Colony Code which puts upon the appellant, in an appeal on a question of fact, the onus of satisfying the Appellate Court that the judgment was against the weight of evidence.

It is to be noted that when Burton J. stated in his own words the principle upon which an Appellate Court in the Colony should act he used more restricted terms than the Indian Court whose judgment he had just cited.

I do not think the other local cases to which I was referred state any fresh principle: they are only examples of the application of recognized principles. I am not now trying to restate those principles but am merely giving a caution against reliance on Indian cases which are not applicable to the law of the Colony.

There is one other point to which I should refer. I agree with the appellant's contention that where the judgment depends upon inferences drawn from proved facts the Appellate Court is as competent to draw those inferences as the trial Court; but nevertheless, in my opinion, section 315 requires that the Appellate Court should not refuse to accept an inference drawn by the Magistrate if it appears to be fair and reasonable even though the Appellate Court might not have itself drawn that inference. An inference which is fair and reasonable cannot, I think, be said to be against the weight of evidence.

In this case the grounds of appeal are many and long, but, in effect, amount to this: that at the conclusion of the case for the Prosecution no case against the accused had been made out which if unrebutted would warrant his conviction, and that although the trial Magistrate called upon the accused for his defence there was nothing in the evidence called for the defence which strengthened the case for the prosecution, but on the contrary the evidence was such that the Magistrate ought to have entertained a reasonable doubt of the accused's guilt and have acquitted him.

[His Lordship next reviewed the evidence in the case and decided that on the facts of the case he was not prepared to hold that the inferences drawn by the learned Magistrate from them were unreasonable or that the finding was against the weight of the evidence. He then proceeded as follows:—]

There is one point of procedure to which I wish to draw attention.

The prosecution sought to cross-examine witnesses on statements made to the Police under the provisions of Section 124 of the Criminal Procedure Code. The statements in question were handed to the Magistrate who, after looking at them, rejected the application, but nevertheless marked the statements as exhibits and they appear as part of the record.

If an application under Section 124 (2) is not allowed the statement is not in evidence at all and should not be marked or form part of the record.

As a matter of practice it is advisable for the prosecuting officer to mark the passage or passsages in the statement which he considers inconsistent with the evidence before he hands the statement to the Magistrate. This ensures that the attention of the Court is drawn to the relevant passage and only the portion allowed by the Magistrate need be put to the witness. If the witness admits making the contradictory statement there is, of course, no need for a copy of the written statement to be put in evidence, but if there is no such admission, the written statement must be formally proved.

Appeal dismissed.

Re O. K. VARGHESE & COMPANY.

[Orig. Civil Juris. (McElwaine, C.J.) Nov. 10, 1941]

Bankruptcy—Service of Bankruptcy Petition upon respondent who carries on business in name of "Company" and who is a sole proprietor of the business—Whether mere closing down a place of business constitutes an act of bankruptcy.

Closing a place of business is not an act of bankruptcy unless the closing is done to defeat or delay creditors; and the Petition must allege this.

Where the respondent to a Bankruptcy Petition carried on business under e.g. the name "O.K.V. & Company," his own name being "O.K.V." and he himself being the sole proprietor of the business, he must be personally served with the Bankruptcy Petition, at any rate, in the absence of any active misrepresentation which might raise an estoppel against him.

Cases Referred to—

(1) *Re the Debtors* (No. 21 of 1912) 107 L.T.R. 624.

(2) *Re a Judgment Debtor* (No. 1539 of 1936) 1937 1 Ch. 137.